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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 351

GRACE LINE INC., *Petitioner*

v.

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

ALFRED GIARDINO
LORENZ, FINN & GIARDINO
165 Broadway
New York 6, New York
Counsel for
Grace Line Inc.

Of Counsel:

E. BARRETT PRETTYMAN, JR.
HOGAN & HARTSON
800 Colorado Building
Washington 5, D. C.

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review an order of the Court of Appeals of the State of New York, entered in the above-entitled case on May 7, 1964. This order denied petitioner leave to appeal an order of the Appellate Division of the Supreme Court of New York, First Department, which affirmed an order of the Supreme Court of New York (New York County—Special Term, Part I). Relying

exclusively on New York statutory and decisional law, the Supreme Court of New York confirmed an arbitration award which required petitioner to pay "severance pay" amounting to as much as a year's salary to each of ten marine engineers where, indisputably—

(1) there was no "severance" of employment or diminution of job opportunities for the ten engineers but rather an uninterrupted continuance of their employment by petitioner in their same positions, and

(2) petitioner produced an *increase*, not a decrease, in the total number of marine engineers in petitioner's employ.

CITATIONS TO OPINION AND ORDERS BELOW

The order of the Supreme Court of New York (New York County) at Special Term was entered on April 17, 1963, and was accompanied by the only opinion written in this case. The opinion is reported at 38 M. 2d 909, 239 N.Y.S. 2d 293, appears at pages 99-108 of the record below, and is printed in Appendix B hereto, *infra*, pp. 11a-18a.

The order of the Appellate Division of the Supreme Court of New York, First Department, affirming the Supreme Court of New York, was entered without opinion on February 6, 1964. This order is reported at — A.D. 2d —, 246 N.Y.S. 2d 994, and is printed in Appendix B hereto, *infra*, pp. 18a-19a.

The order of the Court of Appeals of the State of New York which denied petitioner's motion for leave to appeal the order of the Appellate Division of the Supreme Court of New York, First Department, was entered without opinion on May 7, 1964. It is reported

at — N.Y. 2d —, — N.E. 2d —, and is printed in Appendix B hereto, *infra*, p. 20a.

Also included in Appendix B are the decision and award of Arbitrator Shaughnessy, dated October 3, 1962. *Infra*, pp. 2a-10a.

JURISDICTION

The order of the Court of Appeals of the State of New York denying petitioner's motion for leave to appeal the order of the Appellate Division of the Supreme Court of New York, First Department, was entered May 7, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

At every stage of these proceedings, petitioner has relied upon § 301 of the Labor-Management Relations Act of 1947; has asserted that the substantive law applicable to this case is "federal law, which the courts must fashion from the policy of our national labor laws" (*Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448, 456 (1957)); and has argued that the "severance pay" award runs so counter to the essence of the controlling collective bargaining agreement that it violates not only federal law but the more restrictive state rule.[1]

QUESTIONS PRESENTED

1. Whether the New York courts, ignoring all federal rules and authority, can apply to an arbitration award under the Labor Management Relations Act of

[1] Brief in Support of Grace Line's Motion to Vacate Arbitrator's Award, Supreme Court of the State of New York, County of New York (Special Term, Part I), pp. 17-21; Appellant's Points, New York Supreme Court, App. Div., First Dept., pp. 9-16, 23-24; Notice of Motion, Affidavit and Brief in Support of Motion for Leave to Appeal, Court of Appeals of New York, pp. 2, 4, 7, 9-10, 14-22.

1947 a restrictive state rule that conflicts with federal law and prevents vacatur of an award that plainly failed to draw its essence from the controlling collective bargaining agreement.

2. Whether a "severance pay" award for petitioner's engineers, rendered under the Labor Management Relations Act of 1947 and intended and designed to compensate employees for their loss of jobs or job opportunities, can be allowed to stand where:

— not a single one of petitioner's engineers lost his job, lost a job opportunity, or lost a day's wage;

— every engineer continued without interruption to work for petitioner at the same wages;

— the net effect of the change of ships was to increase by 140% the number of engineers employed by petitioner; and

— petitioner's bill of sale prevented the old ships from ever competing with American ships or taking away the jobs of American seamen.

STATUTES INVOLVED

The statutory provisions involved are § 301(a) of the Labor-Management Relations Act of 1947 (29 U.S.C. § 185(a), 61 Stat. 156) and §§ 1448-a and 1462 of the New York Civil Practice Act.[2] They are printed in Appendix A, *infra*, pp. 1a-2a.

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[2] Sec. 1462 was replaced by § 7511(b) of the New York Civil Practice Law and Rules, effective September 1, 1963. Sec. 7511(b), while not applicable to this case, is substantially similar to § 1462.

STATEMENT

In July 1959, Grace Line and the National Marine Engineers' Beneficial Association (MEBA) arbitrated into their collective bargaining agreement a severance pay plan (known as the Shipman Severance Award). This plan provided for compensation to marine engineers who lost their jobs or who would suffer loss of job opportunities by reason of the transfer of American flag ships to foreign registry.

The subject arbitration award of severance pay to ten marine engineers was made at the instance of MEBA, allegedly pursuant to the Shipman Severance Award under the collective bargaining contract.

The arbitration award grants each of ten employees severance pay of as much as a full year's wages. Yet not one of these ten employees was "severed" from his job. Not a single one lost his employment or a single day's wages. All ten employees continued to work for Grace Line. There was no severance of employment, no loss of job opportunities to any engineer employed by Grace Line or in the maritime industry generally. On the contrary, when Grace Line replaced two old vessels with two modern vessels, fourteen new marine engineers' jobs were created which had never existed before.

Apart from the failure of the New York courts to apply the paramount federal rule against this award, the notoriety and injustice of the award highlight the threat posed by this case to the efficacy of the arbitral process in achieving stability in labor-management relations generally.

Nearly 90% of the more than 100,000 labor agreements negotiated each year provide for arbitration as

the terminal point of the grievance machinery. With each passing year the number of arbitrations administered by the Federal Mediation and Conciliation Service sharply increases. In the five-year period from 1959 to 1963, this number has almost doubled, from 2,422 in the former year to 4,497 in the latter year.[3] Similar figures are disclosed by the American Arbitration Association, which docketed 2,816 cases in 1959 and 4,074 cases in 1963.[4] It has been estimated conservatively that in 1960 alone, at least 20,000 arbitration cases were heard and decided throughout the United States.[5] On the basis of these and Federal Mediation and Conciliation Service and American Arbitration Association figures, it is fair to say that as many as 25,000 arbitrations were heard and decided in 1963.

Further, arbitration is fast replacing resort to labor boards as the normal method for adjusting industrial grievances and disputes. The developing common law of labor relations is being written more by abritrators today than by official federal agencies. This conclusion is aptly demonstrated by comparing the estimated 25,000 annual arbitration awards with the less than 1,000 litigated unfair labor practice cases tried each year before the National Labor Relations Board. Arbitration, in other words, has become the chosen tribunal of most employers and unions, and is therefore exert-

[3] Federal Mediation & Conciliation Service, Annual Reports, Fiscal Years 1960-1963.

[4] American Arbitration Association, Arbitration News No. 2, 1962-1964.

[5] Herzog and Stone, "Voluntary Labour Arbitration in the United States", LXXXII International Labor Review, No. 4, October 1960, p. 302.

ing an important influence on the American economy. Fleming, *Reflections on the Nature of Labor Arbitration*, 67 Mich. L. Rev. 1245 (1963).

The foregoing figures demonstrate the scope and the weight of public reliance on arbitration as a quick, convenient and fair non-judicial means of settling disputes. How the scope of that public reliance can be narrowed and its weight markedly decreased—to the detriment of the public and the thousands upon thousands of participants in arbitration each year—is demonstrated by the specific facts of this case.

Grace Line operates a fleet of about 23 ships on three trade routes from American to Caribbean and South American ports (35-36).[6] In order to continue to receive an operating differential subsidy from the United States, Grace Line was required to replace two obsolete, 25-year-old passenger ships. In 1956, construction was commenced on two new ships, the Santa Rosa and Santa Paula, as replacements for the obsolete vessels. The two new ships went into service in place of the old ships on June 12 and October 9, 1958, respectively.

Each of the obsolete ships carried five engineers, or a total of 10 engineers on both ships. The new ships carried 12 engineers each, or a total of 24 engineers. The same ten engineers assigned to the old ships were transferred to the new ships without any interruption in their employment or compensation and without any effect upon their seniority. Thus, 14 new marine engineer jobs were created on the placing of the new ships in service (39-41).

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[6] Numbers in parentheses not otherwise identified are to folios in the "Papers On Appeal From Order," certified to this Court.

In June, 1958, MEBA and the industry, including Grace Line, began negotiations on a severance pay plan to compensate a marine engineer "who has permanently lost his position by reason of the transfer or sale of his vessel to foreign registry" (43). If the parties were unable to reach agreement, the matter was to be submitted to an arbitrator whose decision was to constitute the agreement of the parties on the subject (42).

The parties were unable to agree by negotiation. Therefore, on November 5, 1958, MEBA and the industry submitted the matter to arbitrator Mitchell Shipman. The parties defined in writing the issue to be determined by the arbitrator:

> The issue of incorporating into the agreement a clause embodying the general principle that some severance allowance should be made in the case of an engineer who has permanently lost his position by reason of the transfer or sale of his vessel to foreign registry. [48-9]

The Shipman decision and award created a severance pay plan which is now the collective bargaining agreement between the parties (Exhibit D, 124-159). In defining the limits of his authority, Shipman clearly stated:

> The provision in question relates to a *severance* allowance in the case of an engineer *who has permanently lost his position* by reason of the transfer or sale of his vessel to foreign registry. [130-131; emphasis added.]

Shipman's emphasis on the loss of jobs and loss of job opportunities is further manifested throughout his opinion by such expressions as:

> . . . a serious situation of *sharply decreasing job opportunities* for the bargaining unit employees . . . . [132]
>
> specific engineers who have *lost* their jobs . . . . [134]
>
> . . . *displaced* engineers . . . . [134, 145]
>
> . . . engineers who have *permanently lost their positions* . . . . [136]
>
> . . . serious *loss of job opportunities* for the employees . . . . [138]
>
> . . . *permanent loss* of a job . . . . [143]
>
> . . . *displaced* worker . . . . [143-144]
>
> . . . *decreased job opportunities* resulting from the transfers to foreign registry. [147; emphasis added throughout.]

That Shipman was devising a method of compensating those who had lost jobs or job opportunities is manifest by the award itself, which reads as follows:

> Whenever a Company transfers a vessel to foreign registry, it shall give *severance pay* to the regular licensed engineers assigned to such vessel. [150; emphasis added.]

The above part of the award and the language which follows it use the words "severance pay" no less than six times (150-154).

The submission to Shipman contemplated that he would mold a severance pay provision which would become an integral part of the collective bargaining agreement between the parties. It is undisputed that the Shipman Severance Pay Plan (124-59) was incorporated into the contract in effect at that time as well as in the later, successor contract now in effect.

After lying idle in the shipyard for three years, the two obsolete ships were sold to a foreign country for their scrap value (61). The bill of sale prohibited the use of the ships in any American ports forever (62), thus obviating any possibility that at some future date these ships could compete with American ships or take away the jobs of American seamen. MEBA claimed severance pay when the old ships were sold. The matter was referred to Arbitrator Donald F. Shaughnessy, who on October 3, 1962, granted MEBA's claim. In so doing, he expressly found as a fact that Grace Line's conduct caused neither severance nor loss of job opportunities anywhere in the industry and further that

> . . . two new vessels brought into operation do provide the licensed engineers with more job opportunities than were lost by the sale and transfer of the old ships. [99]

Grace Line moved in the Supreme Court of New York, New York County, to vacate the Shaughnessy award. MEBA cross-moved to confirm it.

In the only opinion written by the New York courts in this case, the Supreme Court of New York denied Grace Line's motion and granted MEBA's cross motion. At both the beginning and the end of its opinion, the Court made it abundantly clear that although the award was unjust and unreasonable, the Court considered itself powerless to overturn it under New York law:

> The court reaches the conclusion here stated with the utmost reluctance, for it permits an anomaly —confirmation of an award of severance pay to licensed ship engineers who have remained continuously and still are in the employ of the very

steamship line which under the award must give them the "severance pay."

* * * * * * * * *

Though the court, therefore, may not disturb the award, it cannot withhold voicing its profound regret that MEBA has pressed the demand for severance pay. Allowance of severance pay where, not alone has there been no loss of either jobs or job opportunities, but new jobs have come into being through the entry into service of the new S.S. Santa Paula and S.S. Santa Rosa, runs counter to one's sense of fairness. The award renders a disservice to the cause of both arbitration and collective bargaining. The satisfaction MEBA may take in the temporary advantage it has gained should be tempered by recognition that such seeming victories are bound in the end to be self-defeating. [Pp. 11a, 17a-18a, Appendix B.]

The Court relied solely upon New York statutory and decisional law. Not a single word was said about the applicability of federal law. Not a single reference was made to this Court's decisions in this field, or to any other federal decision.

Neither the Appellate Division in affirming the order below, nor the Court of Appeals of New York in denying review, rendered any opinion.

REASONS FOR GRANTING THE WRIT

1. The New York courts erroneously applied state law to the exclusion of conflicting federal law which, in this area of enforcement of labor-management contracts, is paramount. By applying state law, the New York courts considered themselves bound to affirm an award that contradicted the intent and essence of the controlling collective bargaining agreement and there-

fore violated § 301(a) of the Labor Management Relations Act.

In 1957, this Court held in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448, that the substantive law to be applied in suits under § 301(a) to enforce an arbitration agreement is federal law, which the courts must fashion from our national labor policy. State law may be resorted to only if it is compatible with federal policy, and in any event the state law is absorbed as federal law rather than creating an independent source of rights.[7]

In 1960 this Court decided three cases involving the United Steelworkers of America which have come to be known as the "Steelworkers Trilogy". *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564; *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574; and *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593. These land-mark decisions not only reduced the power of the courts to inquire into the arbitrability and merits of disputes before arbitrators, but also increased arbitrators' direct responsibility to their trust and function.

In the *Enterprise Wheel* case, the Court set forth specific limitations on the power of arbitrators:

> . . . an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the

[7] See also *General Electric Co.* v. *Local 205*, 353 U.S. 547 (1957).

> arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award. [363 U.S. at 597.]

Two years later, this Court held in *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), that suits under § 301(a) for violations of a contract can be brought in either state or federal courts. And in the same year, the Court reaffirmed this principle but made it explicitly clear that regardless of where the suit was brought, "incompatible doctrines of local law must give way to principles of federal labor law." *Local 174* v. *Lucas Flour Co.*, 369 U.S. 95, 102 (1962). In so ruling, the Court noted that all of the state courts that had assumed § 301 jurisdiction had either explicitly considered the problem of state versus federal law or had at least carefully considered federal precedents. (*Id.* at 102-103 n. 10).[8] Only last Term this Court again held that the substantive law controlling a suit to compel arbitration is federal law, fashioned from national labor law policies. *John Wiley & Sons, Inc.* v. *Livingston*, 376 U.S. 543 (1964).

In brief, regardless of where the suit is brought, the arbitrator cannot be considered the final, omnipotent dispenser of industrial justice. He is not free to make his own rules. His award must relate to the collective bargaining agreement. It cannot be made as though that agreement did not exist; it must "draw its essence" from that agreement.[9] If an arbitrator (with-

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[8] See also *Smith* v. *Evening News Ass'n.*, 371 U.S. 195, 199 (1962).

[9] That arbitrators generally regard the Steelworkers Trilogy as increasing their responsibility is obvious from their comments. See, *e.g.*, Smith, *Arbitrability—The Arbitrator, the Courts and the Parties*, 17 Arbitration Journal 3 (1962); Levitt, *The Supreme*

out regard to motive, intent or criminality of purpose) fails to draw the essence of his award from the collective bargaining agreement, this Court has imposed an obligation upon both state and federal forums to refuse to enforce the award. This is the federal rule.

What is the New York rule which was applied in this case?

The statute, § 1462 of the New York Civil Practice Act, has been held by the New York courts to define their power to vacate arbitration awards. This procedural state statute derives from, and is substantially similar to, a statute originally enacted in 1920. No significant change has been made in the procedural limitations on vacatur since the original adoption of these statutory limitations in 1920.

Subsequent as well as prior to the Steelworkers Trilogy, the New York courts have applied as their guide in vacating arbitration awards the tests set forth in § 1462 of the New York Civil Practice Act, such as corruption, fraud, undue means or a perverse or irrational construction attributable to one or more of the specific acts of misconduct specified in the Act. *E.g.*, *National Cash Register Co.* v. *Wilson*, 8 N.Y. 2d 377, 171 N.E. 2d 302 (1960); *Matter of S & W Fine Foods, Inc.* v. *Office Employees International Union*, 8 A.D. 2d 130 (1st Dep't 1959), *aff'd mem.* 7 N.Y. 2d 1018, 166 N.E. 2d 853 (1960). Each of these decisions—the one issued five months after the Trilogy and the other

Court and Arbitration, 14th Annual NYU Conference on Labor, 217 (1961). They have, for example, described their own responsibility as that of performing "the task which the particular parties who have employed them had in mind" (Smith, *ibid.*), and of looking "primarily to the intention of the parties in the collective bargaining agreement" (Levitt, *ibid.*).

three months before—is practically identical in two significant respects:

(1) Each decision equated a "completely irrational construction" or a "perverse misconstruction" of the collective bargaining agreement with the specific classes of misconduct referred to in § 1462; and

(2) Each opinion held in almost exactly the same words that the award could not be set aside because the arbitrators in each case were "not chargeable with misconduct" under § 1462.

The New York rule, therefore, has been the same since the Trilogy as it was before, namely, that enforcement of an arbitrator's award can be refused by the courts only where the arbitrator can be proved guilty of quasi-criminal conduct or misfeasance.

This rule was obviously followed in this case. MEBA argued to the New York courts, *inter alia*, that state law applied to this case and that Grace Line, having chosen the state forum, "cannot now complain of the application of the State law" [10]—an argument plainly at odds with this Court's decision in such cases as *Lucas Flour Co., supra*, where the company brought suit in a state court and federal law was nevertheless held to apply.[11] The New York courts apparently adopted MEBA's erroneous argument. Unlike the many state courts noted by this Court in its *Lucas Flour Co.* opinion, the New York Supreme Court cited no federal authorities whatever. Instead, it relied upon two sections of the New York Court Practice Act

[10] Respondent's Brief, New York Supreme Court, App. Div., First Dept., pp. 6-10, 11.

[11] See also *Humphrey* v. *Moore*, 375 U.S. 335, 343-344 (1964).

and four New York decisions[12] and thus felt itself legally prohibited from overturning this award. It is significant in this regard that the New York Court of Appeals has not vacated a single award by a labor arbitrator in 15 years.

The federal courts, on the other hand, have not hesitated since the Trilogy to set aside awards where arbitrators have done violence to the language and intent of the controlling bargaining agreements.

An example is *Textile Workers Union* v. *American Thread Co.*, 291 F. 2d 894 (4th Cir. 1961), where the Court of Appeals, after reviewing the Trilogy, set aside an award with this language:

> We are not persuaded that the Supreme Court, in recent cases involving arbitration and the right to enforcement of arbitration agreements, intended that the courts should permit an arbitrator to render decisions which do such violence to the clear, plain, exact and unambiguous terms of the submission and the contract of the contending parties. [*Id.* at 899.]

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[12] One of these cited decisions, *Matter of Spectrum Fabrics Corp.*, 285 App. Div. 710 (1st Dept.), *aff'd without opinion*, 309 N.Y. 709, 128 N.E. 2d 416 (1955), cited with approval the case of *International Association of Machinists* v. *Cutler-Hammer, Inc.*, 297 N.Y. 519, which was specifically overruled by this Court in *United Steelworkers of America* v. *American Mfg. Co., supra*, 363 U.S. at 566-567. Despite this Court's ruling, the New York Courts continued to apply the *Cutler-Hammer* doctrine until 1962, when the New York Legislature passed § 1448-a of the Civil Practice Act (set forth in Appendix A). The New York Law Revision Commission stated that the purpose of the statute was to change the *Cutler-Hammer* doctrine so that ". . . the New York law should be brought into harmony with the federal law." N.Y. Leg. Doc. (1962) No. 65 (F).

Similarly, in *Local 791, International Union* v. *Magnavox Co.*, 286 F. 2d 465 (6th Cir. 1961), the Court cited the Trilogy and set aside an award on the ground that the arbitrator had in effect added to the terms of the contract which governed the arbitration.[13]

The refusal of the New York courts to recognize federal law in this vital area is of great importance not only to litigants but to the harmony of our national labor policy. There are very practical differences between the state and federal rules. The federal rule would refuse enforcement to an award which fails to draw its essence from the collective bargaining agreement, *i.e.*, where the arbitrator, without any relation or reference to the agreement, dispenses "his own brand of industrial justice". *United Steelworkers of America* v. *Enterprise Wheel & Car Corp., supra*, 363 U.S. at 597. In the federal context, therefore, the arbitrator's award can be set aside without reference to motive, intent or criminality. The sole test is objective and simple: application of the essence of the collective bargaining agreement.

The New York rule, on the other hand, permits vacatur only where the arbitrator is so fraudulent, corrupt, biased, or otherwise tainted in his approach that

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[13] See also two additional decisions setting aside arbitration awards: *Taft Broadcasting Co.* v. *Columbus-Dayton Local*, 297 F. 2d 149, 153 (6th Cir. 1961) ("The fact that the dispute is arbitrable does not mean that the arbitrator may go beyond the limits of the collective bargaining agreement or ignore any collateral agreement . . . . He may not 'dispense his own brand of individual justice.' . . . "); *Local 453, International Union* v. *Otis Elevator Co.*, 201 F. Supp. 213, 218 (S.D.N.Y. 1962) ("However inviolable the teaching that courts keep their hands off arbitration awards, they are not edicts proclaimed by divine right. Arbitrators are creatures of contract. They are no more above public law than the parties from whom they derive their powers").

he has produced an award which is a perverse misconstruction or completely irrational construction of the agreement.

New York courts limit themselves to vacating awards only where the arbitrator is guilty of quasi-criminal conduct or misfeasance. This is the practice followed before the Trilogy and after the Trilogy. In consistently refusing to extend the arbitrator's responsibility beyond their own definition of their statutory power, the New York courts have thrown the New York rule directly into conflict with the federal rule.

2. The "severance pay" award in this case was so perverse that it must be set aside regardless of what law is applied.

There can be no question but that Shipman clearly intended to devise an award that would grant severance pay to workers who lost their jobs or job opportunities; otherwise, his repeated references to "permanently lost" positions (130-131, 136), "loss of" and "decreased" job opportunities (138, 147), "displaced" workers (143-144), etc., lose all semblance of meaning. His award itself, by the use of the words of art, "severance pay," carried his intention into formal language. The parties certainly contemplated an agreement that related to lost positions, because the original negotiations had revolved about a marine engineer "who has permanently lost his position" (43). Yet the Shaughnessy "severance pay" award was made applicable where:

> —not a single engineer lost his job, lost a job opportunity, or lost a day's wage;
>
> —every engineer continued without interruption to work for the same employer at the same wages;

—the net effect of the change of ships was to increase by 140% the number of engineers employed by the company; and

—the company's bill of sale prevented the old ships from ever competing with American ships or taking away the jobs of American seamen.

The arbitrator (a non-lawyer) not only failed to draw his award from the essence of the collective bargaining agreement; he flouted the agreement and issued an award that ran directly counter to the agreement's language and to the intent of the parties. Such an award cannot stand, regardless of which forum is used or which law is applied for purposes of review.

CONCLUSION

Grace Line does not argue with, nor seek to set aside, the established rules of law giving arbitrators full power properly to determine the merits of all questions before them without judicial restraint.

However, it is important that public confidence in the arbitral process be preserved by providing for judicial correction of arbitral abuse and irrational awards. Unless judicial correction is available for such determinations as this one, the arbitration process, so necessary to the full development of industrial justice, is in danger. If the parties are to be encouraged to arbitrate their labor disputes, they must be sure that at least minimal safeguards are available and that they are not at the complete mercy of arbitrators who substitute their own concepts for the essence of collective bargaining agreements entered into by the parties.

The decision of the arbitrator in this case has shocked the public conscience. It is difficult for any-

one—mariner, labor official, or casual observer—to understand that severance can be paid as a bonus not only when no one has been affected by any conduct of the employer, but further where the employer's action has increased the number of jobs available in the industry. The New York Times summed up the public view in an editorial which appeared on October 18, 1962, which was placed in the record (Exhibit B, 112-116), and which is set forth in full in Appendix C to this petition, *infra*, p. 21a.

The courts below felt that because the document before them was an arbitration award, they were compelled to enforce it despite the fact that it ". . . runs counter to one's sense of fairness" and "renders a disservice to the cause of both arbitration and collective bargaining". (321-22). But courts are far from powerless to correct arbitral abuses, and this Court has so stated.

The determination below should be reversed, and the Shaughnessy award vacated.

Respectfully submitted,

ALFRED GIARDINO
LORENZ, FINN & GIARDINO
165 Broadway
New York 6, New York
Counsel for
Grace Line Inc.

Of Counsel:

E. BARRETT PRETTYMAN, JR.
HOGAN & HARTSON
800 Colorado Building
Washington 5, D. C.